

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TROY SMITH,

Plaintiff,

-v-

No. 9:10-CV-1502
(DNH/DEP)

C. ROSATI, Correctional Officer, Great Meadow Correctional Facility; C. ST. JOHN, Correctional Officer, Great Meadow Correctional Facility; BRIAN FISCHER, Commissioner of Corrections; ANTHONY J. ANNUCCI, Chief Counsel, Deputy Commissioner; LUCIEN LECLAIRE, JR.; RICHARD ROY, Inspector General; C. FRASER, Sgt, Great Meadow Correctional Facility; GOODMAN, Lt., Great Meadow Correctional Facility; HARVEY, Commissioner's Hearing Officer; C.O. TORRES, Counselor, Great Meadow Correctional Facility; TED NESMITH, Physician Assistant; NURSE DAVID LINDEMANN, Registered Nurse, Great Meadow Correctional Facility; B. MARS, Laundry Supervisor, Great Meadow Correctional Facility; PAUL ZARNETSKI, Lt., Great Meadow Correctional Facility; and ALBERT PRACK, SHU Director, DOCCS,

Defendants.

APPEARANCES:

TROY SMITH
Plaintiff Pro Se
02-A-6432
Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902

OF COUNSEL:

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

MICHAEL G. McCARTIN,, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On February 20, 2013, the Honorable David E. Peebles, United States Magistrate Judge, advised, by Report-Recommendation that defendants' motion for partial summary judgment be granted in part and denied in part. Defendant Fraser timely filed objections to the Report-Recommendation.

Based upon a de novo review, the Report-Recommendation is accepted. See 28 U.S.C. § 636(b)(1).

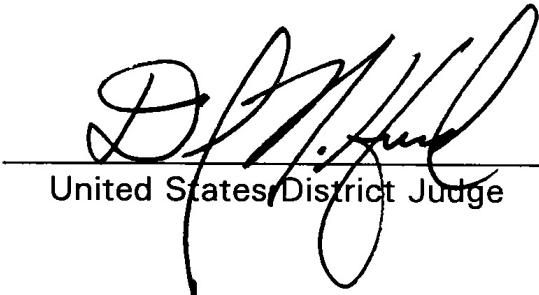
Therefore, it is

ORDERED that

1. Defendants' motion for partial summary judgment is GRANTED in part and DENIED in part; and

2. All claims against all defendants are DISMISSED with the exception of those asserted against defendants Rosati and St. John;¹ the failure to intervene claim against defendant Fraser; and the First Amendment retaliation claim against defendant Goodman.

IT IS SO ORDERED.



United States District Judge

Dated: April 10, 2013
Utica, New York.

¹ Defendants did not move for dismissal of the excessive force claim asserted against defendants Rosati and St. John.